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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,017	03/30/2000	HANS-JUERGEN HENKEL	2345/112	4579
26646	7590	10/22/2004	EXAMINER CONTEE, JOY KIMBERLY	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			ART UNIT 2686	PAPER NUMBER

DATE MAILED: 10/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/462,017		HENKEL, HANS-JUERGEN	
	Examiner		Art Unit	
	Joy K Contee		2686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-28 is/are allowed.
- 6) ☒ Claim(s) 15 is/are rejected.
- 7) ☒ Claim(s) 16-20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claim 15 has been considered but are moot in view of the new ground of rejection.

Applicant has argued that the Aoki et al. (US 4597079) reference previously used transmits "only one" signal or burst from either the terminal unit 1 or the standby terminal unit 2. In response to applicant's argument, it is noted that the features upon which applicant relies (i.e., only one transmit signal or burst) are not recited in the rejected claim. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, Examiner notes that Aoki et al. discloses receiving signals or bursts at both the terminal unit 1 and the standby terminal unit 2, see col. 4, lines 16-26. Hence, each of the terminals units 1 and 2 are able to detect the signal states therein (e.g., fault detection). Examiner has maintained Aoki et al. as the primary reference.

Examiner has withdrawn the rejection under 35 USC 103 using Aoki et al., in view of Tirro et al. (US 4722083). Examiner has found the Gregorat (US 6327243) reference to meet the requirement of controllers controlled by software (see detailed rejection below).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Aoki et al. (Aoki), U.S. Patent No. 4,597,079, previously used, in view of Gregorat, U.S. Patent No. 6,327,243.

Regarding claim 15, Aoki discloses a process for controlling a use of a satellite transmission capacity in order to achieve a substitution of out-of-order data lines in terrestrial networks such that an alternative routing via a satellite is initiated and monitored and an assignment is effected with respect to the alternative routing, the process comprising the steps of:

causing a plurality of controllers controlled by a routine and switchover logic and respectively allocated to one of a master terminal (i.e., terminal 1) and a slave terminal (i.e., terminal 2) to achieve a control that is automatic, decentralized, and local (i.e., reads on contained within the terminal 1 and 2) (col. 4, lines 52-62 and col. 8, lines 20-23); and

causing the plurality of controllers (i.e., control unit s108 and 108', see Figs. 7A and 7B) to detect a need for the alternative routing (i.e., to standby unit, terminal unit 2) based on an analysis of a data control signal from a data transmission device of a user (col. 4, line 3s 16-23 and col. 7, lines 63-67 and col. 8, line 20 to col. 9, line 17); and

using a control logic to monitor locally and automatically an occupancy state of the satellite transmission capacity (col. 6, lines 36-48); and carrying out logic-controlled

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alternative operations via a respective one of the plurality of controllers (col. 8, lines 20-59).

Aoki fails to explicitly disclose controllers controlled by software.

In a similar field of endeavor, Gregorat provides evidence of a primary controller and secondary controller which monitors active transactions by means of control processors (see Fig. 2, #201,210 and #251,260 and col. 7, lines 19-27). Gregorat also teaches that a controller can be read on any device, system or part thereof that controls at least one operation, and can be implemented in software, with a functionality that may be distributed locally (i.e., reads on decentralized) (col. 3, lines 46-56).

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Aoki to include software controlled controllers for the purpose of using a more modern sense of control opposed to the routine using flag registers.

Allowable Subject Matter

4. Claims 21-27 are allowed.
5. Claims 16-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joy K Contee whose telephone number is 703-308-

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0149. The examiner can normally be reached on M (alternating), T & Th, 5:30 a.m. to 2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703-305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JC

October 13, 2004


JOY K. CONTEE
PATENT EXAMINER